Office-Supreme Court, U.S.
FILED
JUL 31 1981
ALEXANDER L. STEVAS,
CLERK

81-202

No. 81-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

PETITION FOR WRIT OF CERTIORARI

LLOYD N. CUTLER
JAMES ROBERTSON
WILLIAM R. RICHARDSON, JR.
JOHN PAYTON
DRAKE CUTINI

WILMER, CUTLER & PICKERING
1666 K Street, N.W.
Washington, D.C. 20006
(202) 872-6000

THOMAS I. ATKINS
CHARLES E. CARTER

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
Tenth Floor
1790 Broadway
New York, New York 10019
(212) 245-2100
Counsel for Petitioners

Of Counsel:

WILLIAM L. ROBINSON
FRANK R. PARKER

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

July 31, 1981

QUESTIONS PRESENTED FOR REVIEW

1. Where a boycott of white merchants, organized by black persons to protest the continued denial of their civil rights, was accompanied by speeches, picketing, leaflet distribution and peaceful marches, as well as by what a state court found to be some incidents of unlawful conduct by some participants, was it constitutional to issue a permanent injunction against all participants banning all boycott activity, including protected speech and assembly?

2. Can a civil rights boycott constitutionally be enjoined in its entirety on the basis of the finding by a state court that some of the boycott participants engaged in "intimidation, threats, social ostracism, vilification, and traduction"?

3. Where a civil rights boycott caused business losses, and where the court found that a small percentage of the participants had engaged in unlawful acts during the boycott, could the court constitutionally impose joint and several liability for all the business losses upon all the boycott participants, including those whose only involvement in the boycott was to support its aims and voluntarily to withhold their patronage?

LIST OF PARTIES BELOW

In addition to these Petitioners, the following parties were Appellants in the Mississippi Supreme Court:

Mississippi Action for Progress, Inc.
Beatrice Atlas
Eli Brooks
Priscilla Brooks
Maggie Clark
Mack Louis Davis
Alex Dorsey
Ella Dorsey
Mary Durham
John Eggleston
John Ellis
Rachael Ellis
Ethel Graise
Charlie Harris
Albert Jackson
Mrs. E.J. Jennings
Lela Jones
Bobby Kelly
Clarence Lucas
Bessie Newman
D.A. Newman
Roosevelt Owens
Henry Otis Preston
Viola Robinson
Dora Shorter
Roman Shorter
Rosa Shorter
Annie B. Smith
Delores Smith
Leon Tarleton
Lessie Mae Walls
Alonzo Warner
Ethel Warner

Bonnie Wells
Gussie Pearl Wilson
Willie Wilson
Early Wren
Ruby Wren

The following parties were Appellees in the Mississippi Supreme Court:

Claiborne Hardware Company, Inc.

Q.H. McDaniel, Jr., d/b/a McDaniel Pharmacy

James E. Hudson and George Hudson, d/b/a Hudson Bros. Piggly-Wiggly Store

Waddy Abraham, d/b/a Jitney Jungle

Joe Ellis, Mrs. Ben Mullen, and Miss Ella Ellis, d/b/a George Ellis Food Store

Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store

Murad Nasif & Mildred Nasif, d/b/a M & M Superstore Washateria

Port Gibson Lumber & Supply Company, Inc.

W.H. Hay, d/b/a O.K. Cleaners & Shirt Laundry

Charles R. Dobbs, d/b/a Western Auto Associates Store

Allen Motor Co., Inc.

Mrs. Edgar A. McCaa, d/b/a Town & Country

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
LIST OF PARTIES BELOW	ii
TABLE OF CONTENTS	v
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	3
Jurisdiction and Reviewability	9
REASONS FOR GRANTING THE WRIT	11
I. The Decision Below Presents an Important First Amendment Question Concerning the Constitutional Legitimacy of Political Boycotts That Will Have Significant Impact on Future Political Protest Activity	11
II. The Decision Below Misconstrues the Narrow Exception to Traditional First Amendment Principles Applied by This Court in *Milk Wagon Drivers Local 753 v. Meadowmoor Dairies*, and Is in Direct Conflict with the Decision of the Fifth Circuit in This Very Case	15
III. The Decision Below Violates the First Amendment's Guarantee of Freedom of Association in a Way That Poses Serious Restrictions upon Group Protest Activity	21
CONCLUSION	24

TABLE OF AUTHORITIES

Cases	Page
Abood v. Detroit Board of Education, 431 U.S. 209 (1977)	17
AFL v. Swing, 312 U.S. 321 (1941)	18
Cafeteria Employees Local 302 v. Angelos, 320 U.S. 293 (1943)	18
Cantwell v. Connecticut, 310 U.S. 296 (1940)	15
Carey v. Brown, 447 U.S. 455 (1980)	11, 17
Carroll v. President & Commissioners of Princess Anne, 393 U.S. 175 (1968)	15, 18
Collin v. Chicago Park District, 460 F.2d 746 (7th Cir. 1972)	18
Consolidated Edison Co. v. Public Service Commission, 447 U.S. 530 (1980)	15
Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975)	9, 10, 11
Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961)	14
Edwards v. South Carolina, 372 U.S. 229 (1963)	20
Elfbrandt v. Russell, 384 U.S. 11 (1966)	21, 23
Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975)	15
Feiner v. New York, 340 U.S. 315 (1951)	20
First National Bank v. Bellotti, 435 U.S. 765 (1978)	11, 15
Flynt v. Ohio, 101 S. Ct. 1958 (1981)	10
Healy v. James, 408 U.S. 169 (1972)	21, 23
Henry v. First National Bank (Henry I), 50 F.R.D. 251 (N.D. Miss. 1970), *rev'd*, 444 F.2d 1300 (5th Cir. 1971), *cert. denied*, 405 U.S. 1019 (1972)	5
Henry v. First National Bank (Henry II), 424 F. Supp. 633 (N.D. Miss. 1976), *aff'd*, 595 F.2d 291 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980)	6, 10, 14, 19
In re Primus, 436 U.S. 412 (1978)	20
Letter Carriers Branch 496 v. Austin, 418 U.S. 264 (1974)	18

TABLE OF AUTHORITIES—Continued

	Page
Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293 (1961)	15
Machesky v. Bizzell, 414 F.2d 283 (5th Cir. 1969)	14, 19
Mathews v. Eldridge, 424 U.S. 319 (1976)	11
Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc., 312 U.S. 287 (1941)	15, 16, 17, 18, 19, 20
Mills v. Alabama, 384 U.S. 214 (1966)	11
Missouri v. National Organization for Women, Inc., 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980)	13, 14
NAACP v. Button, 371 U.S. 415 (1963)	12, 15, 23
NAACP v. Overstreet, 221 Ga. 16, 142 S.E.2d 816 (1965), *cert. dismissed as improvidently granted*, 384 U.S. 118 (1966)	13
National Socialist Party of America v. Village of Skokie, 432 U.S. 43 (1977)	10
Near v. Minnesota ex rel. Olson, 283 U.S. 697 (1931)	19
Nebraska Press Assn. v. Stuart, 423 U.S. 1327 (1975) (Blackmun, J., in chambers)	10
Nebraska Press Assn. v. Stuart, 427 U.S. 539 (1976)	15
New Orleans S.S. Association v. General Longshore Workers, 626 F.2d 455 (5th Cir. 1980), *cert. granted sub nom. Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Association*, 49 U.S.L.W. 3722 (March 30, 1981) (No. 80-1045)	13
New York v. Cathedral Academy, 434 U.S. 125 (1977)	9
NLRB v. Retail Store Employees Local 1001 (Safeco), 447 U.S. 607 (1980)	17
Noto v. United States, 367 U.S. 290 (1961)	21, 23
Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971)	12, 18
Pennekamp v. Florida, 328 U.S. 331 (1946)	20
Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 (1945)	9

TABLE OF AUTHORITIES—Continued

	Page
Rouse Philadelphia, Inc. v. Ad Hoc '78, 417 A.2d 1248 (Pa. Super. Ct. 1979), *cert. denied*, 449 U.S. 1004 (1980)	13
Schneider v. State, 308 U.S. 147 (1939)	15
Shelton v. Tucker, 364 U.S. 479 (1960)	15
Teamsters Local 20 v. Morton, 377 U.S. 252 (1964)	14
Teamsters Local 795 v. Newell, 356 U.S. 341 (1958), *rev'g per curiam* 181 Kan. 898, 317 P.2d 817 (1957)	15, 18
Terminiello v. Chicago, 337 U.S. 1 (1949)	18
Thomas v. Collins, 323 U.S. 516 (1945)	12
Thornhill v. Alabama, 310 U.S. 88 (1940)	12, 15
Time, Inc. v. Firestone, 424 U.S. 448 (1976)	20
UMW v. Gibbs, 383 U.S. 715 (1966)	14
UMW v. Pennington, 381 U.S. 657 (1965)	14
United States v. Dellinger, 472 F.2d 340 (7th Cir. 1972), *cert. denied*, 410 U.S. 970 (1973)	22
United States v. Spock, 416 F.2d 165 (1st Cir. 1969)	22
Wooley v. Maynard, 430 U.S. 705 (1977)	15
Youngdahl v. Rainfair, Inc., 355 U.S. 131 (1957)	18

Constitutional Provisions

U.S. Const. amend. I	*passim*
U.S. Const. amend. VI	23
U.S. Const. amend. XIV, § 1	*passim*

Statutes

28 U.S.C. § 1257	3, 9
28 U.S.C. § 1343(3)	5
42 U.S.C. § 1983	5
Miss. Code Ann. § 11-51-31	6
Miss. Code Ann. § 97-23-85	6

TABLE OF AUTHORITIES—Continued

Miscellaneous Page

H. Commager, Documents of American History (7th ed. 1963) 12
H. Laidler, Boycotts and the Labor Struggle (1913) 12
A. Meiklejohn, Free Speech and Its Relation to Self-Government (1948) 17
S. Morison, The Oxford History of the American People (1965) 12
N.Y. Times, June 22, 1981, at A12, col. 1 12
Note, *The Finality Rule for Supreme Court Review of State Court Orders*, 91 Harv. L. Rev. 1004 (1978) 10
Note, *The Common-Law and Constitutional Status of Anti-discrimination Boycotts*, 66 Yale L.J. 397 (1957) 12
L. Tribe, American Constitutional Law (1978) 22
Webster's New Collegiate Dictionary (1977) 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

PETITION FOR WRIT OF CERTIORARI

Petitioners, the National Association for the Advancement of Colored People ("NAACP")[1] and 91 individual black residents of the State of Mississippi,[2] respectfully

---

[1] The NAACP has more than 2,000 adult and youth branches throughout the country, and is affiliated with the NAACP Special Contribution Fund, the NAACP National Housing Corporation, and Crisis Publishing Company.

[2] The individual Petitioners are Ferd Allen; Henry Anderson; Alonzo Atlas; Calvin Bailey; James Bailey; McLawrence Bailey; Joseph M. Barber; Kenneth C. Barber; Bill Beasley; Helen Beasley; Calvin Blackburn; Marjorie W. Brandon; Janie Brown; Tullos Brown; Eddie Burrell; James Burrell; Robert Butler, Jr.; Arthur Lee Camphor; Irma Rae Camphor; W. E. Camphor; Al-

pray that a Writ of Certiorari issue to review the Judgment and Opinion of the Supreme Court of Mississippi entered on December 10, 1980.

OPINIONS BELOW

The opinion of the Supreme Court of Mississippi in this case, *NAACP v. Claiborne Hardware Co.*, 393 So. 2d 1290 (Miss. 1980), is reproduced in Appendix A. The unreported opinion of the Chancery Court of the First Judicial District of Hinds County is reproduced in Appendix B.

JURISDICTION

The judgment of the Mississippi Supreme Court was entered on December 10, 1980. App. C. That court extended the time for filing of petitions for rehearing until January 24, 1981. App. D. Petitions for rehearing were denied on March 4, 1981. App. E. By order of

---

berta Coleman; Charles Collier; James Collier; Alexander Collins; Geneva Collins; Thelma Crowder; Dan Currie; Sarah Jane Currie; Charles Davis; Mary Ella Dee; James DeVoual; Geneva Durham; Johnny Durham; Harvey Ellis; Jim Ellis, Jr.; Katie Ellis; Charles Evers; James Gray; Walter L. Griffin, Sr.; Bernard Gusta; Leesco Guster; Cline Harvey; Jim Holt; Willie Jackson; Jesse Johnson; Roscoe Johnson; Julia Coleman Jones; Marcus Jones; Nathaniel H. Jones; Samuel Jones, Jr.; Bernice Lee; Edward Lee; Margaret Liggan; Julia Lucas; Nathaniel Martin; Leander Monroe; Johnny Moore; Mary Lee Moore; Willie V. Moore; Ellis Neal; Amos Newsome, Jr.; James Odom; Leona Owens; William Owens; Henry Patton, Jr.; Evan Roberson; William Robinson; Mary Ross; Odessa Ross; William Matt Ross; Elmo Scott; Rudolph Shields; Oliver Shinall; Bilbo Smith; Ira Thomas; Carl Thompson, Jr.; Marguerite Thompson; Mack Tisdale; George Henry Walker; Thelma K. Walker; Eddie Walls, Jr.; Alex Warner; Albert Weathers; Carl Lee Wells; Eddie Lee Wells; Katie Wells; Bome Wells; James Whitney; Calvin Williams; Ernestine Williams; Aaron Wilson; and Arthur Wyatt.

The twelve Respondents here, who were the Appellees in the court below, are identified at page iii of this Petition.

Justice Powell, dated May 23, 1981, the time for filing a petition for writ of certiorari was extended to and including August 1, 1981. App. F. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

The Fourteenth Amendment to the United States Constitution provides:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

This action was brought by a group of white merchants in Claiborne County, Mississippi, including Respondents here, against these Petitioners and other black citizens of Claiborne County, seeking damages and injunctive relief in connection with a boycott. The boycott was organized in 1966 to dramatize the protest of black people against the continued denial of their civil rights by the local government and businesses in their community.

The boycott in question grew out of discussions about civil rights issues in late 1965 and early 1966 between

a group of black citizens and a group of white public officials and business leaders, including a number of these Respondents. In March 1966, black leaders prepared a list of specific grievances, including demands for the desegregation of county schools, the county courthouse and hospital, and all other public facilities; the employment of blacks on the local police force; the desegregation of bus stations and other public accommodations; the extension of courtesy titles to blacks as well as whites; the construction of streets, lighting, and sewage facilities in black residential areas of the county; the appointment of blacks to positions on the Board of Education, on juries, and as election officials; and the employment of black clerks and cashiers in stores patronized by blacks.[3]

These grievances were delivered to the political and business leaders of Claiborne County, but they were largely ignored or unsatisfied. App. B at 15b. On April 1, 1966, at a meeting held at the First Baptist Church in Port Gibson, Mississippi, several hundred black citizens decided by voice vote to support a general boycott of certain white-owned businesses in Claiborne County in order to dramatize their unmet demands.

Particularly at the outset, and intermittently thereafter, the boycott was accompanied and publicized by speeches, marches, picketing, and leaflet distribution aimed at persuading blacks not to patronize the merchants' stores. Many of the picketers were young children. App. A at 13a. (R. 1147, 2140.) The picketing and marching activities, which were closely monitored, photographed, and tape recorded by both city and county law enforcement officials, were orderly at all times. (R. 1127-28.) The frequency and intensity of boycott-related picketing, marching, leafletting, and speaking varied over time.

---

[3] The complete list of grievances is set forth in the Mississippi Supreme Court's opinion. App. A at 10a-12a.

Protest activity was especially intense after the assassination of Dr. Martin Luther King, Jr., in April 1968, and again after a young black man was shot and killed at his home by a white policeman in Port Gibson in April 1969.

In October 1969, the merchants filed this action in the chancery court for Hinds County, Mississippi, seeking injunctive relief against further boycott activities and $3.5 million for business losses allegedly caused by the boycott. On December 24, 1969, defendants filed a special demurrer, asserting that the demands of the bill of complaint were not maintainable under the First and Fourteenth Amendments. The chancellor overruled this demurrer on February 27, 1970. Defendants also sought on First and Fourteenth Amendment grounds—and for a time secured—a federal court injunction against the maintenance of this action. This preliminary injunction was vacated by the United States Court of Appeals for the Fifth Circuit in 1971 for lack of subject-matter jurisdiction.[4] The case went to trial in chancery court in 1973. Defendants moved to dismiss on the ground that enjoining and assigning liability to their conduct would violate the First and Fourteenth Amendments. On February 25, 1974, that motion was denied.

---

[4] *Henry v. First Nat'l Bank (Henry I)*, 50 F.R.D. 251 (N.D. Miss. 1970), *rev'd*, 444 F.2d 1300 (5th Cir. 1971), *cert. denied*, 405 U.S. 1019 (1972). *Henry I* involved a claim brought pursuant to 42 U.S.C. § 1983 on behalf of the defendants in this case. The federal preliminary injunction against prosecution of this case was issued on the theory that the merchants "seek to infringe upon [Petitioners'] First Amendment rights," and that "the prosecution of the State Action will have a chilling effect upon the exercise of those rights." 50 F.R.D. at 268. On appeal, the Fifth Circuit held that the mere commencement of the private state tort suit had not itself involved "state action" for purposes of 28 U.S.C. § 1343(3), the jurisdictional counterpart to 42 U.S.C. § 1983. The court's rationale presumed that the state court defendants would receive full and fair consideration of their First Amendment defenses in chancery court. *See* 444 F.2d at 1310.

More than two years after the close of the evidence, the chancellor issued his opinion and final decree. Apps. B, G. The court awarded the merchants approximately $1.25 million in damages, statutory penalties, and attorneys' fees, and declared 130 defendants (including these Petitioners) jointly and severally liable for those damages. The principal ground of liability as found by the trial court was violation of Mississippi's "anti-boycott statute," Miss. Code Ann. § 97-23-85, which was enacted after and in response to the civil rights boycott activity then prevalent in the state. Other grounds were restraint of trade (under state law) and the common law of civil conspiracy. The final decree also enjoined the defendants and all persons confederating with them from, *inter alia*, "[p]ersuading, soliciting, advising, threatening, coercing, intimidating and restraining any person" to withhold patronage from plaintiffs. The decree also banned all future "[p]icketing or patroling" of plaintiffs' stores. App. G at 19g.

The 130 defendants appealed to the Mississippi Supreme Court.[5] Appellants assigned as error the chan-

[5] The defendants moved in the Mississippi Supreme Court for relief from the requirement that they post a surety bond of 125 percent of the amount of the lower court judgment in order to obtain a writ of supersedeas. *See* Miss. Code Ann. § 11-51-31. That motion was denied.

Defendants thereafter sought preliminary injunctive relief from the bonding requirement in federal district court. The federal court granted preliminary relief, finding that Petitioners were likely ultimately to prevail on the merits of their First Amendment defenses to the state court suit. The Fifth Circuit, affirming, observed that the district court's order "delays enforcement of the state Chancery Court's judgment until the Mississippi Supreme Court and, if necessary, the United States Supreme Court have had an opportunity to review the important constitutional issues presented in this case." *Henry v. First Nat'l Bank (Henry II)*, 424 F. Supp. 633 (N.D. Miss. 1976), *aff'd*, 595 F.2d 291, 301 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980).

cellor's failure to accord First Amendment protection to the Claiborne County boycott, and raised a number of state law defenses to the judgment. On December 10, 1980, the Mississippi Supreme Court rendered its opinion and judgment. The court found Mississippi's anti-boycott statute and trade restraint statutes inapplicable and grounded its decision only on the common law of civil conspiracy. It affirmed the chancellor's decision to assign to virtually all the appellants full responsibility for all the merchants' business losses. That decision was premised exclusively upon the "presen[ce]" in Claiborne County of "force, violence, or threats," App. A at 23a, which the court found to be the product of a general conspiracy among all the boycott participants. Quoting extensively from the chancellor's opinion, the court held:

> "'In carrying out the agreement and design, certain of the defendants, acting for all others, engaged in acts of physical force and violence against the persons and property of certain customers and prospective customers. Intimidation, threats, social ostracism, vilification, and traduction were some of the devices used by the defendants to achieve the desired results. Most effective, also, was the stationing of guards ("enforcers," "deacons," or "black hats") in the vicinity of white-owned businesses. *Unquestionably, the evidence shows that the volition of many black persons was overcome out of sheer fear, and they were forced and compelled against their personal wills to withhold their trade and business intercourse from the complainants.*'" App. A at 20a, *quoting* App. B at 39b (emphasis supplied by Mississippi Supreme Court).

The Mississippi Supreme Court rejected the appellants' claim of First Amendment protection for their boycott activities, noting:

> "The agreed use of illegal force, violence, and threats against the peace to achieve a goal makes the present state of facts a conspiracy. We know of no instance,

> and our attention has been drawn to no decision, wherein it has been adjudicated that free speech guaranteed by the First Amendment includes in its protection the right to commit crime." App. A at 23a.

The court identified a few acts of hooliganism that occurred in Claiborne County during the boycott but did not connect them with the boycott campaign or its organizers. *See* App. A at 15a-18a. The court did not specify who committed the "crime" referred to in the above quotation. Nor did it explain what types of "intimidation, threats, social ostracism, vilification, and traduction," if any, constitute "crime." [6]

The court reversed and rendered judgment in favor of 38 of the appellants.[7] As to the remaining 92 appellants who are Petitioners here, however, the Court upheld the chancellor's injunction prohibiting all further boycott activity.[8] The Court also held that the 92 appellants would be liable for all business losses that the merchants could prove were caused by the boycott. All

---

[6] The dictionary definition of "traduction" is defamation. *See* Webster's New Collegiate Dictionary 1238 (1977) ("expos[ing] to shame or blame by means of falsehood and misrepresentation").

[7] Of the 38, 37 were individuals that could not be held liable even under the court's generalized conspiracy theory. Either there was no evidence about them at all, or the evidence failed to show that they were active in the boycott in any way. Also dismissed was Mississippi Action for Progress, Inc., a federally-funded, nonprofit Mississippi corporation administering the Headstart Program in Claiborne County.

[8] In upholding the injunction, the court asserted that appellants viewed this issue as "moot," App. A at 5a, even though they had specifically assigned it as error. Appellants sought reconsideration of this disposition of the injunction question in their petition for rehearing. Appellants' position was not that the outstanding injunction was moot for purposes of appellate review, but that chancery jurisdiction *on remand* would be inappropriate in view of the absence of equity jurisdiction where the activities sought to be enjoined were not continuing. App. H. Appellants' rehearing petition was denied without opinion. App. E.

decisions not to patronize were thus charged to these 92 appellants. The Court did find errors of state law in the merchants' proof of damages, and it remanded for a retrial on that question, concluding:

> "We are satisfied that complainants suffered some damages resulting from the boycott but are of the opinion that the amount allowed was excessive under the evidence presented." App. A at 35a.

Petitions for rehearing were denied on March 4, 1981. App. E.

Jurisdiction and Reviewability

The decision below is a "[f]inal judgmen[t] or decre[e]" within the meaning of 28 U.S.C. § 1257. It involves the second category of final judgment identified by this Court in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 480 (1975), *i.e.*, one

> "in which the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings."

Here, no federal questions remain for decision by the state trial court on remand. The Mississippi Supreme Court's decision does not leave room for litigating in state court any of the important First Amendment questions presented by this Petition. Subsequent proceedings apparently will be directed solely to the question of how much money each complaining merchant lost because of the boycott. The constitutional questions presented by the judgment below "will survive and require decision" whatever may be decided on remand. Such judgments are final for purposes of Section 1257. *See, e.g., New York v. Cathedral Academy*, 434 U.S. 125, 128 n.4 (1977); *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120 (1945).

The special procedural posture of this case strongly counsels in favor of deciding these important, and readily

identifiable,[9] First Amendment questions now. The permanent injunction against all future protest activities directed at the merchants' businesses is now final. While the injunction may be reviewable in this Court someday, the prior restraint it imposes upon Petitioners' rights of free speech is in effect now and, but for the Fifth Circuit's stay,[10] would completely bar the exercise of these rights in the interlocutory period and during retrial. *See National Socialist Party of America v. Village of Skokie*, 432 U.S. 43, 44 (1977); *Nebraska Press Assn. v. Stuart*, 423 U.S. 1327, 1329-30 (1975) (Blackmun, J., in chambers).[11] The chilling effect of this highly publicized case upon Petitioners and upon NAACP chapters nationwide is a factor that cannot be overemphasized.

Considerations of judicial economy and federalism would be well-served by review at this point in the litigation. As this Court noted in *Cox*, one of the touchstones of the finality requirement is the recognition that immediate review may avoid "the mischief of economic waste." 420 U.S. at 477-78. Trial of the damage issues in this case would be protracted and complex. The Mississippi Supreme Court directed that in estimating lost sales attributable to the boycott each merchant must exclude the effects of such factors as population changes, managerial skills, advertising effects, the 1970 recession, and the need for and availability of increased inventory. App. A at 30a-31a. The Court further directed that each merchant's conversion of lost sales to lost earnings be recalculated to consider changes in the pricing policies of his business, remanded the awards for loss of good

---

[9] *Cf. Flynt v. Ohio*, 101 S. Ct. 1958, 1960 (1981).

[10] In *Henry II* the Fifth Circuit enjoined enforcement of the chancery court decree pending review by the Mississippi Supreme Court and by this Court. *See* note 5 *supra*.

[11] *Accord*, Note, *The Finality Rule for Supreme Court Review of State Court Orders*, 91 Harv. L. Rev. 1004, 1031-32 (1978).

will for the introduction of further evidence, and established additional guidelines on remand. *Id.* at 30a, 31a-35a. A trial on these issues could consume months (the first trial lasted six months) and cost hundreds of thousands of dollars. It would be an "economic waste," given the possibility of subsequent reversal by this Court. Review in this Court now is consistent with the pragmatic nature of the finality requirement.[12]

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW PRESENTS AN IMPORTANT FIRST AMENDMENT QUESTION CONCERNING THE CONSTITUTIONAL LEGITIMACY OF POLITICAL BOYCOTTS THAT WILL HAVE SIGNIFICANT IMPACT ON FUTURE POLITICAL PROTEST ACTIVITY.

The Claiborne County boycott campaign was in the mainstream of the civil rights movement. Since Reconstruction, black citizens of Claiborne County had been foreclosed from participation in elections, forced to attend segregated schools, and denied employment either in public jobs funded by their tax dollars or in private jobs working for the merchants who depended on their trade. The boycott was also in the mainstream of American political history. Citizens were urged by means of speeches, marches, leaflets, and picketing to participate in the boycott. Those communications, designed to alter prevailing governmental policies, were quintessentially protected speech.[13] It has always been beyond question that the First Amendment permits the advocacy of boycott messages to protest government

---

[12] *See, e.g., Cox, supra,* 420 U.S. at 486; *Mathews v. Eldridge,* 424 U.S. 319, 331 n.11 (1976).

[13] *See, e.g., Carey v. Brown,* 447 U.S. 455, 466-67 (1980); *First Nat'l Bank v. Bellotti,* 435 U.S. 765, 776-77, 790 (1978); *Mills v. Alabama,* 384 U.S. 214, 218 (1966).

policies. That amendment guarantees American citizens "the opportunity to persuade to action, not merely to describe facts." [14]

Boycott campaigns have played an important role in the history of political protest in this country ever since American colonists refused to buy English-made goods in order to force repeal of the Stamp and Townshend Acts.[15] Abolitionists refused to buy slave-made goods before the Civil War.[16] Consumers' Leagues organized by the Progressives around the turn of the century issued reports and "white lists" to urge boycotts of what they viewed as "sweat-shop" industries.[17] Blacks in Montgomery, Alabama, launched the desegregation movement in this country through their boycott of that city's bus system.[18] Only recently, church groups have organized a boycott campaign to protest the sponsorship of television programming featuring prominent displays of sex or violence.[19] The Eighth Circuit recently afforded First Amendment protection to a boycott protesting the failure of several states to ratify the proposed Equal Rights

---

[14] *Thomas v. Collins*, 323 U.S. 516, 537 (1945). *See also Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971); *NAACP v. Button*, 371 U.S. 415, 429 (1963); *Thornhill v. Alabama*, 310 U.S. 88, 104-05 (1940).

[15] S. Morison, The Oxford History of the American People 197-98 (1965); H. Commager, Documents of American History 67-68, 76-78, 80 (7th ed. 1963) (non-importation resolutions). The Sons and Daughters of Liberty played an active role in these boycotts, distributing circulars urging citizens not to trade with Tory merchants. One typical poster read:

> "It is desired that the Sons of Liberty would not buy any one thing of them . . ., for in so doing they will bring disgrace upon themselves and their posterity forever and ever. Amen."

H. Laidler, Boycotts and the Labor Struggle 29 (1913).

[16] H. Laidler, *supra*, at 55.

[17] *Id.* at 33-35.

[18] *See* Note, *The Common-Law and Constitutional Status of Anti-discrimination Boycotts*, 66 Yale L.J. 397 (1957).

[19] *See* N.Y. Times, June 22, 1981, at A12, col. 1.

Amendment.[20] This Court will hear this Term threshold Norris-LaGuardia issues involving a refusal to handle Soviet cargoes in response to the Russian intervention in Afghanistan.[21]

The Court has never before found occasion to consider the important question of how the First Amendment applies in the context of political boycott activity.[22] The lower federal courts have recognized that political boycott activity holds protected constitutional status. In its recent opinion in a proceeding related to this very case, the Fifth Circuit observed:

> "At the heart of the Chancery Court's opinion lies the belief that the mere organization of the boycott and every activity undertaken in support thereof could be subject to judicial prohibition under state law. This view accords insufficient weight to the First Amendment's protection of political speech and association. There is no suggestion that the NAACP . . . or the individual defendants were in competition with the white businesses or that the boycott arose from parochial economic interests. On the contrary, the boycott grew out of a racial dispute with the white merchants and city government of Port Gibson and all of the picketing, speeches, and other communication associated with the boycott

---

[20] *Missouri v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980).

[21] *New Orleans S.S. Ass'n v. General Longshore Workers*, 626 F.2d 455 (5th Cir. 1980), *cert. granted sub nom. Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 49 U.S.L.W. 3722 (U.S. March 30, 1981) (No. 80-1045).

[22] Other political boycott cases have not squarely presented the question raised in this case. *See Missouri v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980); *Rouse Philadelphia, Inc. v. Ad Hoc '78*, 417 A.2d 1248 (Pa. Super. Ct. 1979), *cert. denied*, 449 U.S. 1004 (1980); *NAACP v. Overstreet*, 221 Ga. 16, 142 S.E.2d 816 (1965), *cert. dismissed as improvidently granted*, 384 U.S. 118 (1966) (*per curiam*) (5-4).

> were directed to the elimination of racial discrimination in the town. This differentiates this case from a boycott organized for economic ends, for speech to protest racial discrimination is essential political speech lying at the core of the First Amendment." [23]

And in *Machesky v. Bizzell*, 414 F.2d 283, 287, 288-89 (5th Cir. 1969), involving a virtually identical civil rights boycott, the Fifth Circuit affirmed the grant of a federal injunction against a sweeping Mississippi chancery decree in order "to vindicate clear First Amendment rights" involved in that boycott—"political rights which determine the composition of government and the direction of government policy." [24]

The Mississippi Supreme Court in this case has refused to accord any protection for these political rights. It has held that these Petitioners will be liable for all business losses caused by everyone's refusal to patronize plaintiffs' stores—regardless of whether an individual's decision to withhold trade was a matter of lawful persuasion or unlawful coercion.[25] And it has enjoined all protest

---

[23] *Henry v. First Nat'l Bank (Henry II)*, 595 F.2d 291, 303 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980).

[24] Similarly, in *Missouri v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980), the Eighth Circuit refused to apply either the Sherman Act or Missouri tort law to a boycott organized by NOW to protest the state's failure to ratify the proposed Equal Rights Amendment. The Eighth Circuit relied in part upon this Court's decisions holding that group activity directed at influencing governmental policies implicates the First Amendment's guarantee of the right to petition for redress of grievances. *See Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *UMW v. Pennington*, 381 U.S. 657 (1965).

[25] Like the overbroad injunction, this failure to apportion damage liability was constitutional error. *See UMW v. Pennington*, 381 U.S. 657, 671-72 (1965); *UMW v. Gibbs*, 383 U.S. 715, 729-35 (1966); *cf. Teamsters Local 20 v. Morton*, 377 U.S. 252, 259-62 (1964) (damage award under state law for unlawful union activity cannot include losses caused by simultaneous union activity protected by federal labor law).

activities directed at those stores, including peaceful speeches, marches, leaflet distribution, and peaceful picketing. This was constitutional error. The First Amendment requires "[p]recision of regulation," not "[b]road prophylactic rules." *NAACP v. Button*, 371 U.S. 415, 438 (1963). That doctrine has uniformly been applied by this Court to state statutes,[26] municipal ordinances,[27] and judicial injunctions.[28] As the Court has recently held, "Where a government restricts the speech of a private person, the state action may be sustained only if the government can show that the regulation is a precisely drawn means of serving a compelling state interest." *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 540 (1980). The state court's decision in this case is not precisely drawn, nor has it been shown to serve any state interest. It is not an aberration this Court can safely let pass. It is a serious threat to American political freedom.

II. THE DECISION BELOW MISCONSTRUES THE NARROW EXCEPTION TO TRADITIONAL FIRST AMENDMENT PRINCIPLES APPLIED BY THIS COURT IN *MILK WAGON DRIVERS LOCAL 753 V. MEADOWMOOR DAIRIES*, AND IS IN DIRECT CONFLICT WITH THE DECISION OF THE FIFTH CIRCUIT IN THIS VERY CASE.

The court below purported to find justification for its decision in *Milk Wagon Drivers Local 753 v. Meadow-*

---

[26] *See, e.g., First Nat'l Bank v. Bellotti*, 435 U.S. 765, 786 (1978); *Wooley v. Maynard*, 430 U.S. 705, 716-17 (1977); *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 296-97 (1961); *Shelton v. Tucker*, 364 U.S. 479, 488 (1960); *Cantwell v. Connecticut*, 310 U.S. 296, 307-08 (1940); *Thornhill v. Alabama*, 310 U.S. 88, 98-101 (1940).

[27] *See, e.g., Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213-14, 217-18 (1975); *Schneider v. State*, 308 U.S. 147 (1939).

[28] *See, e.g., Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 563-65 (1976); *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 183-84 (1968); *Teamsters Local 795 v. Newell*, 356 U.S. 341 (1958), *rev'g per curiam* 181 Kan. 898, 317 P.2d. 817 (1957).

moor Dairies, Inc., 312 U.S. 287 (1941). App. A at 20a-21a. This reliance could not have been more misplaced. *Meadowmoor* was designed as an extremely narrow exception to the principle that any regulation of speech must be precisely drawn. The Mississippi Supreme Court's unprecedented and unwarranted extension of *Meadowmoor* to the facts of the instant case presents an important question concerning First Amendment rights that should be settled by this Court.

In *Meadowmoor*, this Court upheld an injunction that barred all labor picketing. The circumstances of that case amounted literally to a labor war, in which violence was "neither episodic nor isolated." The Court catalogued these circumstances with great care:

> "Witnesses testified to more than fifty instances of window-smashing; explosive bombs caused substantial injury to the plants of Meadowmoor and another dairy using the vendor system and to five stores; stench bombs were dropped in five stores; three trucks of vendors were wrecked, seriously injuring one driver, and another was driven into a river; a store was set on fire and in large measure ruined; two trucks of vendors were burned; a storekeeper and a truck driver were severely beaten; workers at a dairy which, like Meadowmoor, used the vendor system were held with guns and severely beaten about the head while being told 'to join the union'; carloads of men followed vendors' trucks, threatened the drivers, and in one instance shot at the truck and driver. In more than a dozen of these occurrences, involving window-smashing, bombings, burnings, the wrecking of trucks, shootings, and beatings, there was testimony to identify the wrongdoers as union men.[1] "

"[1] It would needlessly encumber the reports to quote in detail the evidence thus summarized. The curious may turn to the record in the case."

312 U.S. at 291-92 & n.1. Peaceful labor picketing was enjoined along with violent conduct in *Meadowmoor*, but this Court cautioned that the "[r]ight to free speech in the future cannot be forfeited because of dissociated acts of past violence." *Id.* at 296.

There is serious constitutional question whether *Meadowmoor*, a picketing case decided in the context of pervasively violent labor union activity, is even applicable to political boycotts. The First Amendment's guarantees are broader for purposes of political activity than for purposes of labor union activity. *See Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). The Court has explicitly distinguished labor picketing from public protests concerning the desegregation of local schools, observing that the latter "res[t] on the highest rung of the hierarchy of First Amendment values."[29] Here, too, Petitioners' communicative activity has been directed at civil and political reforms, not labor or economic issues. The *Meadowmoor* exception has been—and should continue to be—narrowly confined to the explosive potential of industrial strife.

In any event, the record of this case simply does not support the Mississippi Supreme Court's invocation of the *Meadowmoor* exception. Dissociated acts of past violence do not justify a sweeping injunction against all future speech; the *Meadowmoor* Court itself cautioned that "a trivial rough incident or a moment of animal

---

[29] *Carey v. Brown*, 447 U.S. 455, 466-67 (1980), *citing* A. Meiklejohn, Free Speech and Its Relation to Self-Government (1948).

On the same day *Carey* was decided, two of six Justices who reached the question resolved the "difficult First Amendment issues" concerning the federal ban on peaceful secondary picketing by labor unions only by reference to the substantial governmental interest in limiting the confines of "industrial strife" and the specially "persuasive deterrent" of conduct on the labor picket line. *NLRB v. Retail Store Employees Local 1001 (Safeco)*, 447 U.S. 607, 616-18 (1980) (Blackmun, J., concurring in the result); *id.* at 618-19 (Stevens, J., concurring in the result).

exuberance" does not abrogate First Amendment rights. 312 U.S. at 293. The Court has distinguished the facts of *Meadowmoor*, not only from a companion case decided the same day, *AFL v. Swing*, 312 U.S. 321, 325 (1941), but also from every other similar case that has been decided since.[30]

Meadowmoor cannot be applied, as a matter of law and fact, unless there has been a finding that an injunction limited to violent conduct would be ineffective if picketing were resumed.[31] The Mississippi Supreme Court made no such finding, and apparently considered it unnecessary: "If any of these factors—force, violence, or threats—is *present*, then the boycott is illegal regardless of whether it is . . . political, social or other." App. A at 23a (emphasis supplied). This "presence of violence" test is inconsistent with the plain language of *Meadowmoor*.

The court below did make the conclusory statement that an "atmosphere of fear . . . prevailed among blacks from 1966 until 1970."[32] But fear of "social ostracism, vilification, and traduction," App. A at 20a, does not raise a justiciable issue in a First Amendment case.[33] Much conduct covered by these broad categories is not even actionable, and even actionable "traduction" or

---

[30] *See Cafeteria Employees Local 302 v. Angelos*, 320 U.S. 293, 296 (1943); *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, 139 (1957); *Teamsters Local 795 v. Newell*, 356 U.S. 341 (1958), *rev'g per curiam* 181 Kan. 898, 912-16, 317 P.2d 817, 829-31 (1957); *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 180-81 (1968). *See also Collin v. Chicago Park Dist.*, 460 F.2d 746, 755 (7th Cir. 1972).

[31] *See Youngdahl, supra*, 355 U.S. at 139. *See also Angelos, supra*, 320 U.S. at 296.

[32] App. A at 16a, *quoting* App. B at 35b.

[33] *See, e.g., Letter Carriers Branch 496 v. Austin*, 418 U.S. 264, 280-87 (1974); *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971); *Terminiello v. Chicago*, 337 U.S. 1, 4-5 (1949).

defamation does not justify a prior restraint on its repetition.[34] In any case, it was not fear—or even the fear of "traduction"—that made this civil rights boycott effective. As the merchants themselves conceded in the court below,[35] witness after witness testified that in 1966 black persons in Claiborne County were sufficiently impatient with the continued denial of their civil rights that they voluntarily refused to have any further economic dealings with the plaintiffs in this case. (R. 5731-32, 5855-56, 6066-67, 6227, 6641, 6737, 6848, 6864, 12419, 13543-44.) As one of the employees of the county Headstart Program testified:

> "I just stayed out of the stores, because I had my own personal reasons to stay out of the stores. There were some things I really wanted, and the things I wanted were the right to vote, the right to have a title—Mrs. or Mr. or whatever I am, and not uncle or aunt, boy or girl. So that's what I wanted. And if I wanted a job—a qualified job, I wanted to have the opportunity to be hired. Not hired because I'm black or white, but just hired." (R. 15476.)

Understandably, the Fifth Circuit has refused to apply *Meadowmoor* to the facts of this very case, concluding that the chancellor's sweeping injunction

> "overshoots the mark and the situation cannot be saved by *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 1941, 312 U.S. 287, 61 S. Ct. 552, 85 L. Ed. 836, a case premised on violence of an intensity and duration in no way present here, or at least on the record before the district court."[36]

---

[34] *See, e.g., Near v. Minnesota ex rel. Olson*, 283 U.S. 697 (1931).

[35] *See* Brief for Appellees Claiborne Hardware Co., et al. at 12: "Most of the witnesses testified that they voluntarily went along with the NAACP and their fellow black citizens in honoring and observing the boycott because they wanted the boycott."

[36] 595 F.2d at 304, *quoting Machesky v. Bizzell*, 414 F.2d 283, 290-91 (5th Cir. 1969). Nor was there any insufficiency in the rec-

In First Amendment cases on review from state courts, this Court "of course make[s] an examination of the evidence to ascertain independently whether the right has been violated." [37] Review is essential here to ensure that the extraordinary sanction permitted by *Meadowmoor* is not misapplied. Review is also needed to resolve a direct conflict between the Mississippi Supreme Court and the Fifth Circuit as to the contours of this unusual exception both to the rule of presumptive unconstitutionality of prior restraints and to the prohibition against overbreadth in otherwise lawful limitations on First Amendment activity.

---

ord before the district court. The case was presented only after the conclusion of the state court trial, and the merchants (Respondents here) had ample opportunity to make whatever record they wished to make in federal court.

[37] *Feiner v. New York*, 340 U.S. 315, 316 (1951). *See also id.* at 322 n.4 (Black, J., dissenting); *In re Primus*, 436 U.S. 412, 434 (1978); *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963); *Pennekamp v. Florida*, 328 U.S. 331, 335 (1946). *See also Time, Inc. v. Firestone*, 424 U.S. 448, 463 (1976) (deference to state findings in First Amendment case "predicated on our belief that at some point in the state proceedings some factfinder has made a conscious determination of the existence or nonexistence of the critical fact").

Petitioners cannot provide a comprehensive analysis of the record below within the space limits of this Petition. We note, however, that most of the incidents cited by the chancellor (and quoted by the court below) are either unrelated to the boycott or so minor as to lack constitutional significance. The slashing of the tires on Jasper Coleman's car, for example, was done by a person or persons unknown while the car was parked in front of someone else's house during an all-night poker game. R. 13792. Willie Myles reported that "a carload of young blacks began following him," but the court does not indicate why, and the "young blacks" are not identified with the boycott except that they were blacks, in Port Gibson, at the time the boycott took place. App. A at 18a. The "threatening" nature of other incidents is belied by the fact that the "victims" continued to do business with the plaintiffs. Comprehensive review of the record by this Court will show the lower court's description of "boycott" events to be little more than excerpts from the Claiborne County police blotter from 1966 to 1970.

III. THE DECISION BELOW VIOLATES THE FIRST AMENDMENT'S GUARANTEE OF FREEDOM OF ASSOCIATION IN A WAY THAT POSES SERIOUS RESTRICTIONS UPON GROUP PROTEST ACTIVITY.

The Mississippi Supreme Court applied the common law of civil conspiracy in this case to hold *each* of these Petitioners jointly and severally liable for all the business losses the merchants can prove were caused by the boycott. This essentially unbounded application of conspiracy theory violates the associational rights of these Petitioners and seriously jeopardizes the exercise by others of their First Amendment rights to organize or engage in group protest activity.

It is not disputed that, during the four-to-seven-year period in which the boycott was in effect, unlawful acts were committed in Claiborne County from time to time. There was, however, no evidence whatever suggesting any central design or direction of such acts. The only finding regarding virtually all of the 91 individual Petitioners was that they supported the boycott, belonged to the NAACP, and took part in peaceful marches and demonstrations—not that they or any of them participated in violence, participated in activities supporting violence, or intended to further violent activity.[38]

A state may not constitutionally penalize an individual on the basis of his association with a group or an organization unless it is established that he has both "a knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims." *Healy v. James*, 408 U.S. 169, 186 (1972). *See also Elfbrandt v. Russell*, 384 U.S. 11 (1966); *Noto v. United States*, 367 U.S. 290, 299-300

[38] The courts below identified only nine individuals even arguably connected with "violent" acts in the broadest sense of that term. App. A at 15a-18a.

(1961).[39] The Mississippi Supreme Court made no finding that each of the Petitioners or any of them had the specific intent to further the Claiborne County boycott through illegal means. The court merely lumped all of them together with the conclusory statement that "certain of the defendants, acting for all others, engaged in acts of physical force . . .," App. A at 20a, and observed that "the present state of facts" indicates an "agreed use of illegal force." *Id.* at 23a. Those statements do not impute to these Petitioners, or to any of them, the specific intent to commit unlawful acts. The issue here is not whether a few people committed simple assaults or disturbed the peace contemporaneously or even in connection with the boycott. Rather, the question is whether they had the specific intent to further the boycott by unlawful means. The record contains no evidence of any such specific intent on the part of *any* of the individual Petitioners.

Nor was there any showing that any Petitioner's membership in the NAACP formed the requisite affiliation "with an organization possessing unlawful aims and goals." A few of the persons alleged to have committed unlawful acts were members of the Claiborne County chapter of the NAACP, organized sometime in 1966. But, as the court below itself recognized in dismissing out a number of the defendants, membership in the NAACP does not meet the test.[40]

---

[39] These principles have been applied to "groups" defined, as here, by conspiracy laws, or to other loosely structured groups. *See United States v. Dellinger*, 472 F.2d 340, 392-94 (7th Cir. 1972), *cert. denied*, 410 U.S. 970 (1973); *United States v. Spock*, 416 F.2d 165, 172-73 (1st Cir. 1969). *See generally* L. Tribe, American Constitutional Law 703-04 (1978).

[40] The court below did observe that

> "The testimony revealed that the defendant NAACP provided attorneys to defend black persons arrested and charged with violating the laws of Mississippi in connection with acts arising from the boycott; and this nonresident corporation

The Mississippi Supreme Court's sweeping reliance upon principles of group and vicarious liability in this case will, unless reversed, have serious implications for the continued exercise of associational freedoms by members of the NAACP and every member of any organization devoted to social or political reforms. The Claiborne County boycott resembled many protest movements by citizens who lack power and influence as individuals but suffer what they view as political or social injustice and join together to make themselves heard. In effect, the Mississippi Supreme Court has held that anyone who supports or joins in peaceful, legitimate political protest activities may be held liable for the unlawful act of another with whom his only connection is common political affiliation.

Unless reversed, the Mississippi Supreme Court decision legitimizes liability by association. It conditions a citizen's right to participate in public protest upon his willingness to undertake financial responsibility for the acts of others. It ignores the rule of *Healy*, *Noto*, and *Elfbrandt* that in the First Amendment context an individual may be penalized only for his own actions and intentions, and provides instead that persons whose goals and actions are entirely lawful may nonetheless be treated as lawbreakers if others, with whom they are not shown to be connected, seek the same goal by unlawful means. The consequences of such a rule

---

posted bail bonds and on occasion paid fines of black persons convicted of criminal charges." App. A at 19a, *quoting* App. B at 38b.

This observation—apart from contradicting the testimony (R. 4940)—demonstrates an unprecedented view of the confines of a conspiracy. Quite apart from its inconsistency with the premises of the Sixth Amendment, ascribing liability to the organization that provides a lawyer to a criminal defendant is, in this context, clearly a denial of the First Amendment right of freedom of association. *See NAACP v. Button*, 371 U.S. 415 (1963).

for the future of peaceful political association are so serious that the Mississippi Supreme Court's decision should be reviewed by this Court.

CONCLUSION

For the foregoing reasons, Petitioners pray that a Writ of Certiorari issue to review the Judgment and Opinion of the Supreme Court of Mississippi in this case.

Respectfully submitted,

LLOYD N. CUTLER
JAMES ROBERTSON
WILLIAM R. RICHARDSON, JR.
JOHN PAYTON
DRAKE CUTINI

WILMER, CUTLER & PICKERING
1666 K Street, N.W.
Washington, D.C. 20006
(202) 872-6000

THOMAS I. ATKINS
CHARLES E. CARTER

NATIONAL ASSOCIATION
FOR THE ADVANCEMENT
OF COLORED PEOPLE
Tenth Floor
1790 Broadway
New York, New York 10019
(212) 245-2100
Counsel for Petitioners

Of Counsel:

WILLIAM L. ROBINSON
FRANK R. PARKER

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

July 31, 1981